

11 U.S.C. § 362(h): Congressional Answer to the Bankruptcy Abuse of Consumer Creditors

ARTURO G. HERNANDEZ*

I. INTRODUCTION

Many creditors argue that the bankruptcy system in the United States is simply a haven for the deadbeat debtor who wants to rid himself of all the responsibilities associated with the payment of debts.¹ Although it is understandable why creditors who cannot collect on their loans may feel this way, their portrayal of debtors is misleading and has been proved in many occasions to be erroneous.² Congressional faith in the debtors of America is evident from the enactment of the Bankruptcy Reform Act of 1978 ("Bankruptcy Code").³ The Bankruptcy Code was enacted to protect the honest debtor while simultaneously providing for the evenhanded treatment of the honest debtor's creditors.⁴ Many creditors, however, continued to believe that the bankruptcy system as enacted in 1978 provided too many safeguards protecting debtors at the expense of creditors.⁵ As a result, strong consumer

* I would like to thank Professor Nancy B. Rapoport for her guidance and inspiration throughout the writing of this Note.

¹ Traditionally, society has identified debtors as falling into two different categories. The first category is composed of the honest debtor who has had a run of bad luck and is doing his best to pay off all of his outstanding debts. The second category is composed of the opportunistic debtor who has gone on a spending spree and is using federal bankruptcy law to free himself from the obligation of having to pay off his debts. See Karen Gross, *Re-Vision of the Bankruptcy System: New Images of Individual Debtors*, 88 MICH. L. REV. 1506, 1514-15 (1990).

² Debtors' profiles are in fact very similar to the profiles of average persons in the community. Certainly some debtors abuse the system, but only a distinct minority. Most debtors are not repeat parties in bankruptcy, are truly unable to pay their debts, and were cautious when determining whether or not to enter into bankruptcy. *Id.* at 1516-17.

³ Pub. L. No. 95-598, 92 Stat. 2549 (codified as amended at 11 U.S.C. §§ 101-1330 (1988 & Supp. V 1993) and as further amended at 11 U.S.C.A. §§ 101-1330 (West Supp. 1995)).

⁴ THOMAS D. CRANDALL ET AL., *THE LAW OF DEBTORS AND CREDITORS* ¶ 10.02[2]-[3] (rev. ed. 1991).

⁵ See Richard E. Flint, *Bankruptcy Policy: Towards a Moral Justification for Financial Rehabilitation of the Consumer Debtor*, 48 WASH. & LEE L. REV. 515, 517 (1991) (explaining that society demanded a reduction in the number of consumer bankruptcies through limiting the scope of the Bankruptcy Code).

To eliminate any discrepancies resulting from the uncertain meaning of the word "individual," the author will use the term "consumer debtor" whenever the author refers to

lending groups began lobbying Congress to amend the Bankruptcy Code in order to place consumer lenders on a more equal playing field with consumer debtors.⁶

The consumer lenders' pressure persuaded Congress to implement extensive amendments to the Bankruptcy Code under the Bankruptcy Amendments and Federal Judgeship Act of 1984.⁷ Lenders gained substantial protection under Title III, Subtitle A of the 1984 Amendments,⁸ which were entitled the "Consumer Credit Amendments." Through the Consumer Credit Amendments, Congress added subsection (h) to section 362 (the automatic stay provision) of the Bankruptcy Code.⁹ Section 362(h) provides that "[a]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."¹⁰

Since its enactment, section 362(h) has generated new controversies in bankruptcy law. Federal courts and legal scholars continue to struggle with the question of whether business debtors can use section 362(h) to recover damages from creditors who violate the automatic stay or whether section 362(h) was enacted as a protective measure for the exclusive benefit of consumer debtors. This difficulty arises from the inability of courts to find a uniform definition for

a debtor who is a natural person.

⁶ *Id.*

⁷ Pub. L. No. 98-353, 98 Stat. 333 (codified in scattered sections of 28 U.S.C. and 11 U.S.C.). Congress had been forced to make some modifications to the Bankruptcy Code as a result of the Supreme Court decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). The Court in *Pipeline* held that the jurisdiction granted to bankruptcy courts under the Bankruptcy Reform Act of 1978 was unconstitutional because the Act granted bankruptcy judges jurisdictional powers that could only be granted to Article III judges. *Id.* at 87.

Although only required to amend the Bankruptcy Code's unconstitutional jurisdictional provisions, Congress used the opportunity to enact new legislation in response to the strong lobbying efforts of consumer lenders. This legislation effectively balanced the advantages and disadvantages of the debtor and creditor relationship under the Bankruptcy Code. See Lawrence K. Snider et al., *The Bankruptcy Amendments and Federal Judgeship Act of 1984*, 63 MICH. B. J. 775, 775, 778 (1984).

⁸ Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, secs. 301-324, 98 Stat. 333, 352-58 (codified in scattered sections of 11 U.S.C.).

⁹ *Id.* at 352 (codified at 11 U.S.C. § 362(h) (1988)). The automatic stay prohibits entities from initiating or continuing any actions against the debtor, the debtor's property, or property of the estate. 11 U.S.C.A. § 362(a) (West 1993 & West Supp. 1995). This stay goes into effect immediately upon the filing of a bankruptcy petition under any chapter of the Bankruptcy Code. *Id.*

¹⁰ 11 U.S.C. § 362(h) (1988) (emphasis added).

the word “individual” as used in section 362(h). Consequently, in some courts, section 362(h) can be used by business debtors to collect damages for violations of the automatic stay, while in other courts, business debtors must seek relief through the bankruptcy and district courts’ contempt powers.¹¹

This Note will analyze the Consumer Credit Amendments and suggest that, when Congress enacted section 362(h), Congress intended to fashion a remedy for the exclusive benefit of consumer debtors. The Note will first discuss the diverging interpretations that circuit courts give to section 362(h). Second, the Note will discuss the United States Supreme Court’s standard for statutory interpretation and that standard’s applicability to section 362(h). Next, the Note will provide a background of the congressional intent behind the enactment of section 362(h). Finally, this Note will conclude by suggesting that the term “individual” as used in section 362(h) must be narrowly defined and, therefore, must exclude business debtors.

II. HISTORICAL TREATMENT OF 11 U.S.C. § 362(h)

Four circuits have considered the issue of whether section 362(h) provides a damages remedy for the benefit of corporate debtors. The Third and Fourth Circuits each ruled that section 362(h) must be interpreted to protect all debtors because to rule otherwise would frustrate the purpose of the Bankruptcy Code.¹² Therefore, the Third and Fourth Circuits held that corporate debtors are eligible to use section 362(h) to seek compensatory and punitive relief from entities that violate the automatic stay.¹³ Conversely, the Second and Ninth Circuits reasoned that interpreting the word “individual” as including only natural persons does not conflict with the congressional intent of the Consumer Credit Amendments, and therefore, corporate debtors cannot use section 362(h) to seek damages from automatic stay violators.¹⁴ Although the courts reached different conclusions on this issue, the reasoning of each court provides persuasive arguments that need to be examined in detail.

¹¹ See discussion *infra* part II.

¹² *Cuffee v. Atlantic Business and Community Dev. Corp.*, 901 F.2d 325 (3d Cir. 1990); *Budget Service Co. v. Better Homes, Inc.*, 804 F.2d 289 (4th Cir. 1986); see discussion *infra* part II.A.

¹³ *Cuffee*, 901 F.2d at 329; *Budget Service*, 804 F.2d at 292.

¹⁴ *Johnston Envtl. Corp. v. Knight (In re Goodman)*, 991 F.2d 613 (9th Cir. 1993); *Maritime Asbestosis Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.)*, 920 F.2d 183 (2d Cir. 1990); see discussion *infra* part II.B.

A. Cases Holding that the Word "Individual" as Used in Section 362(h) Encompasses Corporations

Two years after Congress passed the Consumer Credit Amendments of 1984, the United States Court of Appeals for the Fourth Circuit was forced to decide whether or not section 362(h) of the Bankruptcy Code provided a remedy of damages to corporate debtors that had been injured as a result of creditors' violations of the automatic stay. The landmark case is *Budget Service Co. v. Better Homes, Inc.*,¹⁵ and its reasoning was immediately followed by many district courts that were faced with the same issue.¹⁶

In *Budget Service*, the debtor, Better Homes, leased two trucks and a station wagon from the creditor, Budget Service, a business involved in the leasing of motor vehicles.¹⁷ Subsequent to the lease agreement, Better Homes filed a Chapter 11 reorganization petition and thereby obtained the debtor benefits of the automatic stay.¹⁸ Better Homes defaulted on its lease payments in December 1984. To collect on the defaulted payments, Budget Service's president, Allen Bunch, entered onto the premises of Better Homes and repossessed the leased trucks.

In response to Budget Service's collection actions, Better Homes filed a motion in bankruptcy court seeking a contempt order against Budget Service for violation of the automatic stay.¹⁹ The bankruptcy court found Budget Service "in [civil] contempt of Court for the violation of the automatic stay."²⁰

¹⁵ 804 F.2d 289.

¹⁶ See, e.g., *Mallard Pond Partners v. Commercial Bank & Trust Co. (In re Mallard Pond Partners)*, 113 B.R. 420 (Bankr. W.D. Tenn. 1990); *Schewe v. Fairview Estates (In re Schewe)*, 94 B.R. 938 (Bankr. W.D. Mich. 1989).

¹⁷ *Budget Service*, 804 F.2d at 290.

¹⁸ *Id.* at 291.

¹⁹ *Id.*

²⁰ *Id.* Better Homes claimed that the bankruptcy court had jurisdiction to issue civil contempt orders under 11 U.S.C. § 105(a), which allows bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]," and 28 U.S.C. § 157(b)(1), which provides "bankruptcy judges the power to hear 'all core proceedings arising under Title 11.'" *Budget Service*, 804 F.2d at 291. Whether bankruptcy courts have this jurisdiction is an issue that has been the subject of much debate.

Some courts and bankruptcy scholars argue that bankruptcy courts do not have the power to issue civil contempt orders because they are not Article III courts, and civil contempt orders can only be exercised by Article III courts. See *Plastiras v. Idell (In re Sequoia Auto Brokers, Ltd.)*, 827 F.2d 1281 (9th Cir. 1987). Proponents of this theory contend that 11 U.S.C. § 105(a) and 28 U.S.C. § 157(b)(1) cannot be interpreted to provide statutory authority to bankruptcy courts to issue civil contempt orders because Congress did

Additionally, the bankruptcy court certified the issue of criminal contempt to the district court.²¹ The district court affirmed the civil contempt order of the bankruptcy court, and after Budget Service plead guilty to criminal contempt, the district court fined Budget Service in the amount of \$500.²²

Budget Service appealed to the Fourth Circuit Court of Appeals, challenging the constitutionality of the power of the bankruptcy court to issue civil contempt orders.²³ Interestingly, however, the Fourth Circuit Court of Appeals did not decide the issue of civil contempt brought before it, but rather chose to dispose of the case under section 362(h) of the Bankruptcy Code.²⁴

The Fourth Circuit found that section 362(h) “must be read in conjunction with the rest of § 362 and that its sanctions are not limited to the relief of an ‘individual’ in the literal sense.”²⁵ The court went on to state that it was “unlikely that Congress meant to give a remedy only to individual debtors against those who willfully violate the automatic stay provisions of the [Bankruptcy] Code as opposed to debtors which are corporations”²⁶ The court’s reasoning centered on the concept that a narrow reading of section 362(h) would frustrate the purpose and policy of the automatic stay provision to give debtors a “fresh start” and to permit debtors to attempt repayment or reorganization plans.²⁷

At the same time that Budget Service and Better Homes were litigating their case in the Fourth Circuit, another debtor corporation and creditor were

not specifically extend civil contempt powers to bankruptcy courts. *See id.* at 1284.

For a thorough discussion on the contempt power of bankruptcy courts, see William S. Parkinson, *The Contempt Power of the Bankruptcy Court—Fact or Fiction: The Debate Continues*, 65 AM. BANKR. L.J. 591 (1991).

²¹ *Budget Service*, 804 F.2d at 291.

²² *Id.* at 291 n.1.

²³ *Id.* at 291.

²⁴ *Id.* at 291–92. The court stated,

While these questions raised by the parties [challenging the bankruptcy courts’ authority to issue civil contempt orders] are intriguing ones and while the statutory and constitutional basis for a bankruptcy judge’s issuance of civil contempt citations may be unclear at this juncture in the seasoning of the new Bankruptcy Code, we need not reach those issues because the bankruptcy court clearly had the power under § 362 of the Bankruptcy Code, 11 U.S.C. § 362, to impose the sanctions that the district court affirmed

Id.

²⁵ *Id.* at 292.

²⁶ *Id.*

²⁷ *Id.*

involved in similar conduct that later found its way to the Third Circuit Court of Appeals in *Cuffee v. Atlantic Business and Community Development Corp.*²⁸ The Third Circuit held that the creditor violated the automatic stay and that his actions were willful.²⁹ Acknowledging that section 362(h) was applicable to "individuals," the court quickly disposed of the issue by citing *Budget Service* and stating that "the section has uniformly been held to be applicable to a corporate debtor."³⁰ The Third Circuit never elaborated on the *Budget Service* decision nor did it introduce any new reasoning that could expand the analysis used by the Fourth Circuit.

B. Cases Holding that the Word "Individual" as Used in Section 362(h) Limits Compensation to Consumer Debtors

Two circuits have refused to allow corporations to seek compensatory and punitive damages under section 362(h). Eight months after the *Cuffee* ruling, the Second Circuit issued the first federal court of appeals ruling that departed from the so-called uniform application of the Third and Fourth Circuit Courts of Appeals. In *Maritime Asbestosis Legal Clinic v. LTV Steel Co. (In re*

²⁸ 901 F.2d 325 (3d Cir. 1990). In May 1986, Atlantic Business and Community Development Corporation (ABCD), a radio station, filed a Chapter 11 petition in bankruptcy court. *Id.* at 326. Pursuant to 11 U.S.C. § 1107 and § 1108, which allow a debtor in possession to continue the operation of his business after the debtor has filed for Chapter 11 reorganization, ABCD continued to broadcast its radio programs. The creditor, Cuffee, was the owner of the following: the building in which the radio station was operated, the studio equipment, the office furnishings, and the records and albums used for the debtor's business. Cuffee attempted to evict ABCD on several occasions in April 1988. The bankruptcy court issued a restraining order prohibiting Cuffee from exercising these actions, but Cuffee refused to abide by the order. *Id.* at 326-27. As a result, the bankruptcy court found that Cuffee violated the automatic stay provisions under § 362 of the Bankruptcy Code, and therefore, awarded compensatory and punitive damages to the corporate debtor in accordance with § 362(h). *Id.* at 327. Cuffee argued that he did not violate the automatic stay, and alternatively, if he did violate the automatic stay, sanctions were not warranted because his actions did not meet the willful standard mandated by § 362(h). *Id.* at 328-29.

²⁹ *Id.* at 329. Violations of the automatic stay meet the willful requirement of § 362(h) if (1) the entity violating the stay had actual knowledge of the stay and (2) that entity intentionally executed actions that violated the stay. It is irrelevant that the actions of the violating entity were done in good faith. Good faith is not a determinative element of willfulness under § 362(h). J. Scott Humphrey, *Sanctions Against the Creditor's Attorney in Non-Reorganization Bankruptcy Proceedings*, 6 BANKR. DEV. J. 481, 483-84 (1989).

³⁰ *Cuffee*, 901 F.2d at 329.

Chateaugay Corp.),³¹ the debtor, LTV, filed a voluntary Chapter 11 petition on July 17, 1986. Subsequently, in March 1989, the Maritime Asbestosis Legal Clinic (MALC) filed an amended complaint to a previous lawsuit on behalf of over 1300 plaintiffs who were allegedly exposed to asbestos.³² LTV was named as a defendant in thirty-eight of the complaints.³³ As a result of these complaints, LTV sought an order from the bankruptcy court enjoining the continuation of the thirty-eight actions against it and an order awarding LTV compensatory and punitive damages pursuant to sections 105(a)³⁴ and 362(h) of the Bankruptcy Code.³⁵ The bankruptcy court awarded damages under section 362(h) and held the request for contempt under section 105(a) in “abeyance.”³⁶ The district court affirmed the bankruptcy court’s ruling, and thus, MALC appealed to the Second Circuit on four grounds. Although it conceded the first three grounds, MALC continued to argue that the fourth claim, challenging the applicability of section 362(h) to corporate debtors, provided sufficient grounds for reversal of the district court’s decision.³⁷

The Second Circuit held that corporate debtors could not recover damages under section 362(h) of the Bankruptcy Code.³⁸ The *Chateaugay* court reasoned: (1) the principles of statutory interpretation demand that the word “individual” be defined by using its plain meaning;³⁹ (2) the other uses of the word “individual” in the Bankruptcy Code lead to one conclusion—the word “individual” in section 362(h) means natural person;⁴⁰ (3) because the

³¹ 920 F.2d 183 (2d Cir. 1990).

³² *Id.*

³³ *Id.* at 183–84.

³⁴ See discussion *supra* note 20; see also Parkinson, *supra* note 20.

³⁵ *Chateaugay*, 920 F.2d at 184.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 186–87.

³⁹ The court used the United States Supreme Court decision in *United States v. Ron Pair Enterprises*, 489 U.S. 235 (1989), as precedent that the term “individual” must be construed in its literal sense. See discussion *infra* part III.A.

⁴⁰ Section 101(41) defines “person,” and in its definition, it includes both the word “individual” and the word “corporation”: “[P]erson” includes individual, partnership, and corporation, but does not include governmental unit” 11 U.S.C.A. 101(41) (West Supp. 1995). Therefore, it appears that Congress recognizes a difference between the words “person” and “individual” and chooses these words carefully to limit or expand the application of the statute.

Section 109(e) defines who may be a debtor under Chapter 13 as “an individual with regular income.” *Id.* at § 109(e). “[I]ndividual with regular income” is defined under § 101(30) as an “individual whose income is sufficiently stable and regular to enable such individual to make payments” 11 U.S.C. § 101(30) (Supp. V 1993). The term

legislative history does not suggest that section 362(h) was enacted to protect "persons" as defined in the Bankruptcy Code rather than natural persons and because section 362(h) was enacted under the Consumer Credit Amendments, the exclusion of corporate debtors under section 362 is not clearly contrary to the intention of Congress;⁴¹ and (4) the remedy of civil contempt is still available to protect corporations, and it is possible that Congress intended to provide broader protection to natural persons while not extending further protection to corporations.⁴²

This issue was recently raised again in the Ninth Circuit. In *Johnston Environmental Corp. v. Knight (In re Goodman)*,⁴³ the Ninth Circuit Court of Appeals refused to allow corporations to use section 362(h) to obtain compensatory damages against creditors that violated the automatic stay.⁴⁴ The

"individual" is used in both § 109(e) and § 101(30), showing that § 101(30) was only concerned with defining what constitutes regular income, as opposed to who constitutes an individual that may file bankruptcies under Chapter 13. BRIAN A. BLUM, *BANKRUPTCY AND DEBTOR/CREDITOR* 201 (1993). It is clear that a Chapter 13 bankruptcy can be filed voluntarily only by natural persons. *Id.* Therefore, one can conclude that the term "individual" is used by Congress in the Bankruptcy Code when it intends to exclude corporations from the provision.

For an in-depth analysis of other areas in which the term "individual" is used in the Bankruptcy Code and how these uses are relevant to § 362(h), see Mary E. Norton, *Section 362(h): Applicable to Corporate Debtors?*, 56 MO. L. REV. 769 (1991); Richard L. Stehl, *Eligibility for Damage Awards Under 11 U.S.C. § 362(h): The Second Answers the Riddle—When Does Congress Actually Mean What It Says?*, 65 ST. JOHN'S L. REV. 1119 (1991).

⁴¹ See discussion *infra* part III.B.

⁴² *Maritime Asbestosis Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.)*, 920 F.2d 183, 184–85 (2d Cir. 1990).

⁴³ 991 F.2d 613 (9th Cir. 1993).

⁴⁴ *Id.* at 619. In *Goodman*, the Knights, who were the creditors, owned and were lessors of commercial rental property. *Id.* at 615. These three individual lessors were threatened with criminal penalties if they did not correct numerous violations of the Santa Ana Municipal Code on the rental property. These violations were attributable to the lessees of the property. In order to remedy the violations, the Knights sent each lessee "Notices to Quit." David Goodman, a sublessee of the property, having acquired his leasehold interest through Johnston Environmental Corporation (Johnston), a corporation that was a lessee of the Knights' property, had previously filed a Chapter 11 petition. *Id.* However, Johnston was still served with the "Notice to Quit."

The bankruptcy court found the Knights in violation of the automatic stay; however, it found that the violation was not willful, and therefore, damages under § 362(h) could not be awarded. *Id.* The court did provide a remedy in the form of an injunction prohibiting the Knights from pursuing any further detainer actions against the debtors. *Id.*

The Knights filed an appeal with the district court. *Id.* The district court not only affirmed the injunction, but also reversed the bankruptcy court's finding that § 362(h) was

court adopted the reasoning of the Second Circuit in *Chateaugay* and acknowledged the importance of restricting the application of section 362(h) to benefit solely natural persons.⁴⁵

The *Goodman* court stressed the major difference between the traditional use of contempt orders to punish automatic stay violations and the use of section 362(h) to compensate the debtor.⁴⁶ Unlike section 362(h), contempt orders are discretionary, and therefore, bankruptcy courts are not forced to provide relief through civil contempt even when debtors qualify for such relief.⁴⁷ This distinction was crucial to the plaintiff in *Goodman*, because the bankruptcy court's prior action indicated that it would use this discretion to deny relief. The bankruptcy court had already refused to apply section 362(h) on the grounds that the stay violation was not willful.⁴⁸ The Ninth Circuit stressed that this failure by the bankruptcy court to provide a remedy to the corporate debtor indicated that, on remand, the bankruptcy court would use its discretion to deny a request for a civil contempt order against the creditors, thereby again refusing to grant a remedy to the corporate debtor.⁴⁹

The Ninth Circuit ruling implies that failure to allow corporate debtors the use of section 362(h) to seek compensatory and punitive relief from stay violators will leave corporate debtors at the mercy of the courts.⁵⁰ Although this potential lack of remedy is exactly what concerned the Third and Fourth Circuits, the Ninth Circuit did not believe that the unequal treatment of consumer debtors and corporate debtors as a result of such ruling violated the congressional intent behind the enactment of section 362(h).⁵¹ Therefore, the Ninth Circuit reasoned that a literal definition of the word "individual" in section 362(h) is mandated.⁵²

not appropriate in this case. *Id.*

The Knights then appealed the district court decision to the United States Court of Appeals for the Ninth Circuit. *Id.* Although the Ninth Circuit affirmed the injunction, it refused to allow § 362(h) to be used by corporations to obtain compensatory damages against creditors in violation of the automatic stay. *Id.* at 619.

⁴⁵ *Id.* at 619–20.

⁴⁶ If corporations are precluded from using § 362(h), then they can seek relief against stay violators only through requests for civil contempt orders.

⁴⁷ See *infra* notes 82–84 and accompanying text.

⁴⁸ *Goodman*, 991 F.2d at 615.

⁴⁹ *Id.* at 620.

⁵⁰ See *id.*

⁵¹ *Id.* at 619.

⁵² *Id.*

III. ABSENT CONGRESSIONAL CLARIFICATION, SECTION 362(h) MUST BE READ TO APPLY TO NATURAL PERSONS ONLY

As can be seen by the past treatment of section 362(h), circuit courts are split on the issue of whether corporate debtors can claim relief under section 362(h). The following analysis will show that section 362(h) should be enforced only when a consumer debtor has been the victim of an automatic stay violation.

A. Plain Meaning of "Individual"

The United States Supreme Court held that the Bankruptcy Code should be interpreted according to its terms, unless it is clear that the congressional purpose behind the statute would be frustrated by such an interpretation.⁵³ The Court explained that it is unrealistic to expect Congress to explain in detail its reasoning and purpose behind the enactment of every portion of the Bankruptcy Code.⁵⁴ Therefore, "as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute."⁵⁵

The term at issue in section 362(h) is the word "individual." The common definition of "individual" is "a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association"⁵⁶ Black's Law Dictionary recognizes, however, "that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons."⁵⁷ Although some people may view the term "individual" to encompass artificial persons, that interpretation is not the plain meaning of the word. After the decision in *United States v. Ron Pair Enterprises*,⁵⁸ it appears that the term "individual" may include artificial persons only when a statutory definition identifies "individual" to include artificial persons or when the intent of Congress behind a statute is *clearly* frustrated by the common definition of the word "individual."⁵⁹

⁵³ *United States v. Ron Pair Enters.*, 489 U.S. 235, 240 (1989).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ BLACK'S LAW DICTIONARY 773 (6th ed. 1990).

⁵⁷ *Id.*

⁵⁸ 489 U.S. 235 (1989).

⁵⁹ *Id.* at 241 (explaining that the courts' function "is to enforce [the statute] according to its terms").

The Bankruptcy Code does not provide a statutory definition for the word “individual.” Nevertheless, Congress acknowledged that the word “individual” does not include artificial persons because it defined the word “person” under section 101(41) of the Bankruptcy Code by using the word “individual” while also using the words “partnership” and “corporation.”⁶⁰ This definition demonstrates that Congress will use the word “persons” when it seeks to include natural persons as well as artificial persons, but it will use the word “individual” when it seeks to limit the application of the statute by excluding artificial persons.

Unless the “literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters,”⁶¹ courts are prohibited from making calculated guesses about what Congress did or did not intend and they must use the plain meaning of the word.⁶² Therefore, the word “individual” as used in section 362(h) of the Bankruptcy Code can include only natural persons unless it is clear that the congressional intent behind section 362(h) is frustrated by this definition.⁶³ The congressional intent, however, is not endangered by a narrow definition of the term “individual.”⁶⁴ Actually, as the following section will show, congressional goals are strengthened by narrowly defining the word “individual” in section 362(h).

B. Congressional Intent

In determining the congressional intent in using the word “individual” in section 362(h), one must interpret the statutory history of the Bankruptcy Code and section 362(h).

1. The Purpose of the Bankruptcy Code and Section 362(h)

The Bankruptcy Code has two primary purposes: (1) to achieve the evenhanded treatment of creditors by ensuring the “equitable distribution of the

⁶⁰ 11 U.S.C.A. § 101(41) (West Supp. 1995); see Norton, *supra* note 40; Stehl, *supra* note 40. This definition is one of the convincing factors that led to the Second Circuit’s holding that prohibited the enforcement of § 362(h) in cases in which the debtors are corporations. *Maritime Asbestosis Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.)*, 920 F.2d 183, 184 (2d Cir. 1990).

⁶¹ *Ron Pair*, 489 U.S. at 242.

⁶² *Id.*

⁶³ See *Chateaugay*, 920 F.2d at 184 (explaining that *Ron Pair* mandated that the plain meaning of “individual” be used and that § 362(h) can protect only consumer debtors because the intent of Congress is not frustrated by this interpretation).

⁶⁴ See *id.*

debtor's assets" and (2) to provide the honest debtor with relief from his debts.⁶⁵ The automatic stay was one of the provisions enacted to enable parties using the Bankruptcy Code to achieve both of these goals.⁶⁶ Congress identified the purpose of the automatic stay to protect debtors as follows:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan⁶⁷

Congress also enacted the automatic stay as a provision providing protection to creditors:

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.⁶⁸

The purpose behind the enactment of section 362(h) is not as clear as the purpose behind the Bankruptcy Code and the automatic stay. However, a study of the legislative history surrounding the 1984 Consumer Credit Amendments discloses the possible congressional goals behind the damages provision of section 362(h).

Congress enacted the Consumer Credit Amendments in response to consumer lenders' concerns that the bankruptcy system provided too many

⁶⁵ Arnold M. Quittner, *Overview: History of the Bankruptcy Code and Prior Bankruptcy Laws*, 441 PLI/COMM 7 (1987); see CRANDALL, *supra* note 4, at ¶ 10.02[2]-[3].

⁶⁶ Compare 2 COLLIER ON BANKRUPTCY ¶ 362.04 (Lawrence P. King et al. eds., 15th ed. 1987) (explaining that the automatic stay protects both creditors and debtors) with CRANDALL, *supra* note 4, at ¶ 10.02[2]-[3] and Quittner, *supra* note 62 (each stating that the purpose of the Bankruptcy Code was to protect debtors by giving them a fresh start and to provide creditors with "evenhanded" treatment).

⁶⁷ H.R. REP. NO. 595, 95th Cong., 2d Sess. 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-97.

⁶⁸ *Id.* at 6297. The automatic stay has a broad scope which is defined under § 362(a). See 11 U.S.C.A. § 362(a) (West 1993 & West Supp. 1995). It generally protects the estate property, the debtor's property, and the debtor from actions by entities that are trying to collect debts from the debtor or obtain judgments against the debtor. See 2 COLLIER ON BANKRUPTCY, *supra* note 66, ¶ 362.01. Section 362(b) provides some exceptions to actions that are prohibited by the automatic stay. 11 U.S.C.A. § 362 (b) (West 1993 & West Supp. 1995).

loopholes for debtors at the expense of consumer lenders.⁶⁹ Therefore, the provisions enacted under the Consumer Credit Amendments were included to provide advantages to consumer creditors who primarily negotiated with consumer debtors.⁷⁰ Thus, although on its face section 362(h) appears to provide protection to debtors, the Amendments were enacted to protect consumer creditors from consumer debtors, not from corporate debtors.⁷¹ Hence, the applicability of section 362(h) must be consistent with the congressional goals to protect both consumer creditors and consumer debtors.

2. Section 362(h) Provides Protection to Creditors of Consumer Debtors

In *Budget Service Co. v. Better Homes, Inc.*,⁷² the Fourth Circuit held that refusal to allow corporate debtors to use section 362(h) of the Bankruptcy Code as a remedial measure against entities that have violated the automatic stay would frustrate the purpose for which section 362 was enacted.⁷³ The *Budget Service* court reasoned that section 362(h) had to be read in conjunction with the rest of section 362.⁷⁴ However, in attempting to do so, the court never considered the creditor protection function of the automatic stay.⁷⁵

As previously discussed, both the Consumer Credit Amendments of 1984 and the automatic stay provision as enacted by Congress under the Bankruptcy Reform Act of 1978 have a policy of protecting creditors from the unwarranted and abusive loss of their assets and investments.⁷⁶ Although it has never been

⁶⁹ See *supra* notes 5–8 and accompanying text.

⁷⁰ Senator Hatch explained,

The number of consumer bankruptcy cases filed has risen dramatically each year since the bankruptcy code was last amended in 1978. . . . The 1978 amendments generally eased a debtor' [sic] access to bankruptcy to avoid excessive indebtedness. Title II [sic] contains over 30 substantive amendments to curb abuses of the bankruptcy code and make its use truly a last resort.

130 CONG. REC. 20,088 (1984) (statement of Senator Hatch). Although Senator Hatch identified Title II, it is clear from the text that he was referring to Title III.

⁷¹ See Ronald M. Martin & Terrence P. Fagan, *A Guide to the Bankruptcy Amendments and Federal Judgeship Act of 1984*, 13 COLO. LAW. 1775, 1777 (1984).

⁷² 804 F.2d 289 (4th Cir. 1986).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See discussion *supra* part II.A.

⁷⁶ See discussion *supra* part III.B.1. "[I]t is not surprising that, with few exceptions, [Consumer Credit] Amendments shift the balance of rights decidedly in favor of creditors." Karen Gross, *Preserving a Fresh Start for the Individual Debtor: The Case for Narrow*

previously argued, it is certainly plausible that Congress enacted section 362(h) as part of the Consumer Credit Amendments because Congress intended to provide a benefit to consumer creditors. The primary lobbyists for the Consumer Credit Amendments were consumer lenders who primarily provided loans to natural persons rather than to corporations.⁷⁷ Congress responded to their lobbying effort by amending existing provisions and enacting new provisions that would ensure that individual debtors would use bankruptcy as a remedy only when necessary and that creditors would not sustain unnecessary losses as a result of the bankruptcy laws.⁷⁸

Furthermore, one of the major goals of the Consumer Credit Amendments was to give individuals incentives to choose Chapter 13 reorganization bankruptcy instead of Chapter 7 liquidation.⁷⁹ This goal, of course, is only applicable to individuals because corporations are not eligible to file under Chapter 13.⁸⁰ In fact, no substantive amendments were made to any Chapter 11 provisions under the Consumer Credit Amendments.⁸¹ Thus, it is apparent that Congress was only concerned with the relationship between consumer debtors and consumer lenders, rather than the relationship between corporate debtors and corporate lenders.

Given that the automatic stay provision of the Bankruptcy Code has an overall purpose of protecting creditors and that the Consumer Credit Amendments were primarily concerned with the protection of the creditors of consumer debtors, it is rational to surmise that Congress enacted section 362(h)

Construction of the Consumer Credit Amendments, 135 U. PA. L. REV. 59, 83 (1986).

⁷⁷ See Snider et al., *supra* note 7, at 778.

⁷⁸ See 130 CONG. REC. 20,088 (1984) (statement of Senator Hatch).

⁷⁹ "[T]he Code continues and purportedly expands its attempt to encourage them to do so." Paul M. Black & Michael J. Herbert, *Bankcard's Revenge: A Critique of the 1984 Consumer Credit Amendments to the Bankruptcy Code*, 19 U. RICH. L. REV. 845, 852 (1985).

⁸⁰ Section 109(e) provides that only "individuals with regular income" may file under Chapter 13. 11 U.S.C.A. § 109(e) (West Supp. 1995). "Individuals with regular income" is defined under § 101(30) and is interpreted to apply only to natural persons. 11 U.S.C. § 101(30) (Supp. V 1993); see 2 COLLIER ON BANKRUPTCY, *supra* note 66, ¶ 109.50 (explaining that Chapter 13 was not intended to protect partnerships).

⁸¹ The only amendments made to Chapter 11 provisions under the Consumer Credit Amendments were made to § 1103(b) and § 1106(a)(1). Section 1106(a)(1) was amended only to incorporate the new subsection numbers used under the amended § 704. See Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, sec. 311(b)(1), 98 Stat. 333, 355 (codified at 11 U.S.C. § 1106(a)(1) (1988)). The amendment to § 1103(b) narrowed the limitations placed on representatives of creditors' committees by making the limitations applicable only to representatives who are attorneys or accountants.

provision was to protect consumer creditors. This reasoning is based on the fact that section 362(h) serves two purposes: it is a remedy provision and it also serves a deterrent role. The remedy provided to individual debtors by section 362(h) is the most severe remedy available to any debtor who is seeking damages for violations of the automatic stay.⁸² Section 362(h) is a mandatory provision, and therefore, courts do not have any discretion in determining whether or not to award damages when a willful violation of the stay has occurred.⁸³ More importantly, the test to enforce the remedy is less stringent than the test used by the courts to determine if a contempt order is warranted.⁸⁴ As a result, it is reasonable to conclude that in enacting section 362(h), Congress intended to protect the creditors of natural persons and not to protect the debtors themselves. The creditor protection comes from the following warning to automatic stay violators: if you violate the automatic stay at the expense of other creditors of bankrupt individuals, you will face a penalty that is mandatory and severe.

The above reasoning does not apply to creditors of corporations and partnerships. Corporate and partnership creditors do not require the same stringent protection that consumer creditors do for two simple reasons. First, corporate and partnership debtors cannot receive discharges under Chapter 7.⁸⁵ Second, when corporate and partnership debtors file for Chapter 11, they

⁸² The automatic stay contains no other remedy provisions. Therefore, contempt was the only remedy available prior to the enactment of § 362(h). Contempt is not as potent because it is discretionary and has only been used when the entity violating the stay was malicious. Ron Weiss, *Contempt Power of the Bankruptcy Court*, 6 BANKR. DEV. J. 205, 208 (1989).

Contempt can be defined as a willful disregard or disobedience of a public authority. There are . . . two types of contempt—civil and criminal. The distinction between the two lies in the nature of the contemptuous act and the manner in which the court addresses it. Civil contempt is . . . an act against the party in whose behalf the court's order was issued. Any sanction imposed by the court which is intended to coerce compliance with the court's ruling is a civil contempt sanction. On the other hand, conduct which is injurious to the sanctity of the court or its proceedings is criminal contempt.

Parkinson, *supra* note 20, at 592.

⁸³ Martin & Fagan, *supra* note 71, at 1778.

⁸⁴ See Weiss, *supra* note 82, at 208 (explaining that contempt is not an extremely potent remedy because contempt is discretionary and has only been used when the entity violating the stay was malicious).

⁸⁵ Section 727(a)(1) provides that only natural persons can be given discharges under Chapter 7. 11 U.S.C. § 727(a)(1) (1988).

Second, when corporate and partnership debtors file for Chapter 11, they subject themselves to substantial control by their creditors.⁸⁶ Chapter 11 creditors play a much more active role in the bankruptcy proceedings. Impaired creditors have the right to vote on any proposed plans,⁸⁷ and they may even propose their own plan if the debtor has not proposed a suitable plan within the time guidelines provided by the Bankruptcy Code.⁸⁸ Thus, the creditors of corporate and partnership debtors, under Chapter 7, have the satisfaction that the debtors will not receive their discharge, while Chapter 11 impaired creditors have sufficient authorized powers under the Bankruptcy Code to provide them with leverage in bargaining for a suitable plan of reorganization.

This analysis demonstrates that the Fourth Circuit's reasoning in *Budget Service* was incomplete. In *Budget Service*, the court looked for the intent of Congress in enacting section 362(h) by looking at section 362(h) in conjunction with the debtor protection purpose of the automatic stay.⁸⁹ However, the court failed to analyze section 362(h) against the other important goal of the automatic stay—the goal to provide protection to the creditor. On the other hand, the Second Circuit, in providing a strict interpretation to section 362(h), stated,

[S]ubsection (h) was included as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, 352 (1984). The rest of § 362 had been enacted in 1978. Therefore, legislative history and construction which support broad coverage for the automatic stay imposed by § 362(a) do not necessarily apply to subsection (h) . . . [which] was included as part of Title III, Subtitle A, Sec. 304 of Public Law 98-353, entitled "Consumer Credit Amendments," which contains numerous additions to the code relating only to "individuals."⁹⁰

The *Chateaugay* court's statement reinforces the argument that the complete legislative history of section 362(h) cannot be evaluated unless the history

⁸⁶ Sections 1121 and 1126 provide creditors with powers to control some of the debtor's actions. Creditors can draft plans after 120 days have elapsed from the date of the order of relief if the debtor did not file a plan or 180 days from that date if the debtor's plan has not been accepted. 11 U.S.C.A. § 1121(c) (West 1993 & West Supp. 1995). Furthermore, creditors with impaired claims vote on any proposed plans and, in some instances, they can force the confirmation of a plan if the plan has been approved by one impaired class. 11 U.S.C. § 1126 (1988).

⁸⁷ 11 U.S.C. § 1126.

⁸⁸ 11 U.S.C. § 1121.

⁸⁹ See discussion *supra* part II.A.

⁹⁰ *Maritime Asbestosis Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.)*, 920 F.2d 183, 185 (2d Cir. 1990).

Federal Judgeship Act of 1984 is analyzed in conjunction with the purpose of the Bankruptcy Reform Act of 1978 and its automatic stay provision. All of these congressional actions have a policy of protecting the creditors and, therefore, it is consistent with such a policy to interpret section 362(h) as having the purpose of protecting the creditors of consumer debtors.

Allowing only consumer debtors to seek relief under section 362(h) is not in conflict with the purpose of the automatic stay or the Consumer Credit Amendments because both of these provisions protect creditors. Congress simply chose to protect consumer lenders under the Consumer Credit Amendments, and it used section 362(h) to provide that protection by enacting stiff penalties from which consumer debtors can benefit if consumer lenders violate the stay.

3. Section 362(h) Justifiably Provides Greater Protection to Consumer Debtors

Proponents of the expanded interpretation of the automatic stay provision may argue that the award of remedies to a debtor can only be interpreted to mean that Congress intended all debtors to benefit from section 362(h). Assuming, however, that Congress was only concerned with protecting debtors when it enacted section 362(h), it is still within the power of Congress, and consistent with the Bankruptcy Code, for Congress to provide greater protections to individual debtors than to corporate and partnership debtors.

The Fourth Circuit has reviewed section 362(h) in accordance with the overall purpose of the automatic stay.⁹¹ However, the policies behind section 362(h) should also be evaluated in accordance with the Bankruptcy Code as a whole. One must raise the following question: Is it consistent with the Bankruptcy Code's history that Congress would want to protect consumer debtors more than corporate debtors? The answer is yes.

The Bankruptcy Code has always shown considerable leniency towards consumer debtors.⁹² Chapter 7 is a suitable example of this association. Under Chapter 7, consumer debtors are afforded the opportunity to claim exemptions and are provided discharges. Corporate and partnership debtors, on the other hand, do not receive a fresh start under Chapter 7. They are not eligible to claim any exemptions⁹³ and are also precluded from receiving any discharges

⁹¹ *Budget Service Co. v. Better Homes, Inc.*, 804 F.2d 289, 292 (4th Cir. 1986) (agreeing with the decision of a bankruptcy court in Connecticut that read § 362(h) in conjunction with the rest of § 362).

⁹² See *supra* notes 85–88 and accompanying text.

⁹³ Section 522 provides Chapter 7 exemptions only to individual debtors. 11 U.S.C.A.

from their debts.⁹⁴ These rules are consistent with the impact that Chapter 7 bankruptcy has on corporate debtors. Corporate debtors that choose the option of liquidation under the bankruptcy system have given up hope of survival and are therefore terminating their business. However, it is the fact that corporate debtors will not survive after a Chapter 7 bankruptcy that leads to the reasoning that corporate debtors do not need the protection that consumer debtors do. Why compensate a corporation that in a few months will no longer exist? Compensation for dying corporations only makes sense in the extraordinary situation in which creditors are abusing the bankruptcy system or are reaping benefits at the expense of other unsecured creditors. Remedies for these types of actions already exist in the form of civil contempt.⁹⁵

Congress also provided some advantages to consumer debtors under Chapter 13 that are not available to corporate debtors. A comparison of Chapter 13 and Chapter 11 reveals that individual debtors have substantially greater benefits in reorganizations than those provided to corporations under Chapter 11.⁹⁶ First, consumer debtors can only enter into Chapter 13 bankruptcies voluntarily, while corporate debtors can be forced involuntarily into Chapter 11 bankruptcies.⁹⁷ Second, consumer debtors have complete control over the *drafting* of the plan of reorganization without any creditor input,⁹⁸ while corporate debtors' plans may be filed by creditors if the debtors fail to follow the filing schedule under section 1121.⁹⁹

A study of the treatment of consumer debtors and corporate debtors under the Bankruptcy Code shows that Congress has, in numerous provisions, provided greater protection and advantages to consumer debtors than to corporate debtors. Therefore, it is not irrational to conclude that Congress enacted section 362(h) of the Bankruptcy Code as another provision that provides consumer debtors with protection substantially greater than that shared by corporate debtors.

§ 522 (West 1993 & West Supp. 1995).

⁹⁴ Section 727(a)(1) does not grant a discharge to the corporate or partnership debtor, and thus, that debtor cannot gain a fresh start. 11 U.S.C. § 727(a)(1) (1988).

⁹⁵ See discussion *supra* note 20.

⁹⁶ Congress intended to provide these advantages and used the Consumer Credit Amendments to enhance the rights of debtors that choose Chapter 13. See *supra* notes 7-10 and accompanying text.

⁹⁷ Section 303(a) provides that involuntary reorganization bankruptcies can only be imposed against debtors under Chapter 7 and Chapter 11. 11 U.S.C. § 303(a) (1988). Therefore, corporations are always subject to involuntary petitions, but individual debtors cannot be forced into a Chapter 13 reorganization bankruptcy involuntarily.

⁹⁸ 11 U.S.C.A. §§ 1321-1322 (West 1993 & West Supp. 1995).

⁹⁹ See discussion *supra* note 86.

IV. CONCLUSION

Determining the congressional intent behind the enactment of section 362(h) is not a simple task because Congress has never expressly discussed the provision. Moreover, the determination cannot be made by simply looking at the legislative history of the Bankruptcy Reform Act of 1978. The analysis must be conducted by studying the purpose of the automatic stay provision under the Bankruptcy Reform Act of 1978 in conjunction with the purpose behind the Consumer Credit Amendments of 1984. This study reveals that the creditor protection purpose of the automatic stay is consistent with the protection sought by consumer creditors under the Consumer Credit Amendments. Also, deference to individual creditors of consumer debtors is commonplace under the Bankruptcy Code. Therefore, because congressional intent behind the Bankruptcy Code is not frustrated by the exclusive use of section 362(h) by consumer debtors, the plain meaning of the word “individual,” defined as “natural persons as distinguished from a partnership, corporation, or association,” must be used until Congress amends section 362(h) or expresses its specific contrary intent behind this damages provision of the automatic stay.

